

CHAPTER 57-51

OIL AND GAS GROSS PRODUCTION TAX

57-51-01. (Effective through June 30, 2007) Definitions. As used in this chapter:

1. "Barrel of oil" means forty-two United States gallons of two hundred thirty-one cubic inches per gallon computed at a temperature of sixty degrees Fahrenheit [158.99 liters computed at a temperature of 15.56 degrees Celsius].
2. "Commissioner" means the state tax commissioner.
3. "Field" means the geographic area underlaid by one or more pools, as defined by the industrial commission.
4. "Gas" means natural gas and casinghead gas.
5. "Oil" means petroleum, crude oil, mineral oil, and casinghead gasoline.
6. "Person" includes partnership, corporation, limited liability company, association, fiduciary, trustee, and any combination of individuals.
7. "Posted price" means the price specified in publicly available posted price bulletins or other public notices, net of any adjustments for quality and location.
8. "Shallow gas" means gas produced from a gas well completed in or producing from a shallow gas zone, as certified to the tax commissioner by the industrial commission.
9. "Shallow gas zone" means a strata or formation, including lignite or coal strata or seam, located above the depth of five thousand feet [1524 meters] below the surface, or located more than five thousand feet [1524 meters] below the surface but above the top of the Rierdon formation, from which gas is or may be produced.
10. "Transportation costs" means the costs incurred for transporting oil established in accordance with the first applicable of the following methods:
 - a. Actual costs incurred under the arm's-length contract between the producer and the transporter of oil.
 - b. An applicable common carrier rate established and filed with the North Dakota public service commission, or the appropriate federal jurisdictional agency.
 - c. When no common carrier rate would be applicable, the transportation costs are those reasonable costs associated with the actual operating and maintenance expenses, overhead costs directly attributable and allocable to the operation and maintenance, and either depreciation and a return on undepreciated capital investment, or a cost equal to a return on the investment in the transportation system, as determined by the commissioner.

(Effective after June 30, 2007) Definitions. As used in this chapter:

1. "Barrel of oil" means forty-two United States gallons of two hundred thirty-one cubic inches per gallon computed at a temperature of sixty degrees Fahrenheit [158.99 liters computed at a temperature of 15.56 degrees Celsius].
2. "Commissioner" means the state tax commissioner.

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8. "Transportation costs" means the costs incurred for transporting oil established in accordance with the first applicable of the following methods:
 - a. Actual costs incurred under the arm's-length contract between the producer and the transporter of oil.
 - b. An applicable common carrier rate established and filed with the North Dakota public service commission, or the appropriate federal jurisdictional agency.
 - c. When no common carrier rate would be applicable, the transportation costs are those reasonable costs associated with the actual operating and maintenance expenses, overhead costs directly attributable and allocable to the operation and maintenance, and either depreciation and a return on undepreciated capital investment, or a cost equal to a return on the investment in the transportation system, as determined by the commissioner.

57-51-02. Gross production tax - Oil. A tax of five percent of the gross value at the well is levied upon all oil produced within North Dakota, less the value of any part thereof, the ownership or right to which is exempt from taxation. The tax levied attaches to the whole production, including the royalty interest.

57-51-02.1. Type of tax. For purposes of interpreting chapter 785 of the 1987 Session Laws, relating to federal land bank taxation and to the taxation of other governmental entities if their immunity from taxation has been waived, the gross production tax is a real property tax on oil-producing and gas-producing mineral estates and interests.

57-51-02.2. Gross production tax - Gas. A gross production tax is levied upon all gas produced within North Dakota except gas that is exempt from taxation. The tax levied must attach to the whole production, including the royalty interest. The tax on gas must be calculated by taking the taxable production in mcf times the gas tax rate.

1. The gas tax rate is four cents times the gas base rate adjustment for each fiscal year as calculated under subsection 2.
2.
 - a. The tax department shall annually determine the gas base rate adjustment and the resulting gas tax rate for each fiscal year beginning on July first.
 - b. The gas base rate adjustment for the fiscal year is a fraction, the numerator of which is the annual average of the gas fuels producer price index, commodity code 05-3, as calculated and published by the United States department of labor, bureau of labor statistics, for the previous calendar year, and the denominator of which is seventy-five and seven-tenths.
 - c. The tax department shall provide the gas base rate adjustment and the gas tax rate for the fiscal year, as determined under this subsection, to affected producers by written notice mailed on or before June first.

- d. If the index used to determine the gas base rate adjustment is substantially revised, or if the base year for the index is changed, the department by administrative rule shall make appropriate adjustment to the method used to determine the gas base rate adjustment to ensure a result which is reasonably consistent with the result which would have been obtained had the index not been revised or the base year changed.
- e. If the gas fuels producer price index is discontinued, a comparable index must be adopted by the department by an administrative rule.

57-51-02.3. Valuation of oil - Alternatives - Exceptions. The gross value at the well for oil is the price paid for the oil under an arm's-length contract between the producer and the purchaser less, when applicable, transportation costs associated with moving the oil from the point of production to the point of sale under the contract. In the absence of an arm's-length contract, the gross value at the well for oil is established by the first applicable of the following methods:

1. The price paid under an arm's-length contract, to which the person paying the tax is a party, for the purchase or sale of oil of like kind, character, and quality, in the same field or, if none, in a nearby field, less, when applicable, transportation costs associated with moving the oil from the point of production to the point of sale.
2. The price paid under an arm's-length contract, between parties other than the person paying the tax, for the purchase or sale of oil of like kind, character, and quality, in the same field or, if none, in a nearby field, less, when applicable, transportation costs associated with moving the oil from the point of production to the point of sale.
3. The value determined by consideration of the posted price relevant in valuing oil of like kind, character, and quality, in the same field or, if none, in a nearby field, less, when applicable, adjustments for transportation costs to reflect the differential between the value at the point of production and the value at the location reflected in the posted price.

57-51-02.4. (Effective through June 30, 2007) Shallow gas - Gross production tax exemption. Shallow gas produced during the first twenty-four months of production from and after the date of first sales of gas from a well completed or recompleted in a shallow gas zone after June 30, 2003, is exempted from the gross production tax levied under section 57-51-02.2. Gas produced from such a well during testing prior to well completion or connection to a pipeline is also exempt from the gross production tax.

57-51-03. Gross production tax to be in lieu of other taxes. The payment of the taxes herein imposed must be in full, and in lieu of all ad valorem taxes by the state, counties, cities, towns, townships, school districts, and other municipalities, upon any property rights attached to or inherent in the right to producing oil or gas, upon producing oil or gas leases, upon machinery, appliances, and equipment used in and around any well producing oil or gas and actually used in the operation of such well, and also upon oil and gas produced in the state upon which gross production taxes have been paid, and upon any investment in any such property. Any interest in the land, other than that herein enumerated, must be assessed and taxed as other property within the taxing district in which such property is situated. It is expressly provided that the gross production tax is not in lieu of income taxes nor excise taxes upon the sale of oil and gas products at retail.

57-51-04. Equipment used in production exempt from ad valorem tax. No equipment, material, or property is exempt from the payment of ad valorem tax by reason of the payment of the gross production tax as herein provided except such equipment, machinery, tools, material, or property as is actually necessary and being used at the site of a producing well in the production of oil or gas; and it is expressly declared that no ice plants, hospitals, office buildings, garages, residences, gasoline extraction or absorption plants, water systems, fuel

systems, roominghouses, and other buildings, nor any equipment or material used in connection therewith is exempt from ad valorem tax, nor are drilling rigs exempt. The real property is not exempt under this chapter except to the extent of the mineral interests therein.

57-51-05. Payment of tax on monthly basis - When tax due - When delinquent - Payment by purchaser - By producer - How casinghead gas taxed.

1. The gross production tax on oil or gas, as herein provided, must be paid on a monthly basis. The tax on oil is due and payable on the twenty-fifth day of the month succeeding the month of production. The tax on gas is due and payable on the fifteenth day of the second month succeeding the month of production. If the tax is not paid as required by this section, it becomes delinquent and must be collected as provided in this chapter. The penalty does not apply if ninety percent of the tax due has been paid with the monthly return and the taxpayer files an amended monthly return and pays the total tax due within sixty days from the original due date. The commissioner, upon request and a proper showing of the necessity therefor, may grant an extension of time, not to exceed fifteen days, for paying the tax and when the request is granted the tax is not delinquent until the extended period has expired. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest at the rate of twelve percent per annum from the date the tax was due to the date the tax is paid.
2. On oil or gas produced and sold, the gross production tax thereon must be paid by the purchaser, and the purchaser is authorized to deduct in making settlement with the producer or royalty owner, the amount of tax paid; provided, that in the event oil produced is not sold but is retained by the producer, the tax on the oil not sold must be paid by the producer, including the tax due on royalty oil not sold; provided further, that in settlement with the royalty owner the producer has the right to deduct the amount of the tax paid on royalty oil or to deduct therefrom royalty oil equivalent in value at the time the tax becomes due with the amount of the tax paid.
3. Gas when produced and utilized in any manner, except when used for fuel or otherwise used in the operation of any lease or premises in the drilling for or production of oil or gas therefrom, or for repressuring thereon, must be considered for the purpose of this chapter, as to the amount utilized, as gas actually produced and saved.
4. All calculations of the gross production tax on oil or gas, including production, distribution, and claims for credit or refund, are based on the month of production and must be credited to that month.

57-51-05.1. Reclamation of oil - Refiner to pay tax - Reports required. On all oil reclaimed from tank bottoms, pit oil, and saltwater, the gross production tax shall be paid by the operator of the reclaiming plant, unless taxes have already been paid thereon. If tank bottom or pit oil material is removed from the lease by the operator of a treatment plant, the gross value of oil reclaimed from the material is the purchase price paid by the operator of the treatment plant for the material from which the oil is reclaimed. If the operator has not paid a cash price for the material, the oil reclaimed has no value at the well. Every person, firm, association, corporation, or limited liability company engaged in the sale, purchasing, and refining of tank bottoms, pit oil, and saltwater shall report to the commissioner, upon forms prescribed by the commissioner, information necessary to the enforcement of this section.

57-51-06. Tax paid to commissioner - Statements by person paying tax - Statements by producer.

1. The tax herein provided for must be paid to the commissioner and the person paying the tax shall file with the commissioner at the time the tax is required to be paid a statement on forms prescribed by the commissioner. The commissioner may

require a purchaser to file the statement or report by electronic data interchange or other electronic media.

2. Any person engaged in the production, within this state, of oil shall on or before the twenty-fifth day of the next succeeding month after production, and any person engaged in the production of gas within this state shall, on or before the fifteenth of the second succeeding month after production, file with the commissioner a statement upon forms prescribed by the commissioner. The commissioner may waive the requirement that a producer file a well production report. A waiver by the commissioner of the requirement to file a well production report does not release the producer from any obligation to remit the tax under this chapter. A waiver does not release the producer from any duty or obligation under section 57-51-07 to maintain production records for inspection by the commissioner.
3. Reports from either the purchaser or producer, as the case may be, are delinquent after the last day fixed for their filing, and every person required to file a report is subject to a penalty of twenty-five dollars per day for each property upon which the person fails or refuses to file the reports. The penalties herein prescribed are for failure to file reports and are in addition to the penalty imposed by section 57-51-10 and likewise constitute a lien against the assets of the person failing or refusing to file the reports. The penalties prescribed under this section must be collected in the same manner as gross production taxes and must be apportioned as other gross production tax penalties; provided, that the commissioner may, for good cause shown, waive any penalties imposed under this section. When royalty is claimed to be exempt from taxation by law, the facts on which the claims of exemption are based and other relevant information must be furnished when requested by the commissioner.
4. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

57-51-07. Powers of commissioner. The commissioner has power to require any person engaged in such production and the agent or employee of such person, or purchaser of such oil or gas, or the owner of any royalty interest therein to furnish any additional information the commissioner deems to be necessary for the purpose of correctly computing the amount of said tax, and to examine the books, records, and files of such person, and has power to conduct hearings and compel the attendance of witnesses, the production of books, records, and papers of any person, and full authority to make any investigation or hold any inquest deemed necessary to a full and complete disclosure of the true facts as to the amount of production from any oil or gas location, or of any company or other producer thereof, and as to the rendition thereof for taxing purposes.

57-51-08. State board of equalization may adjust rate of gross production tax to equal the general ad valorem tax. Repealed by S.L. 1981, ch. 611, § 2.

57-51-09. Commissioner shall compute tax on incorrect returns.

1. The commissioner may ascertain and determine whether a return required to be filed with the commissioner is a true and correct return of the gross products, and of the value thereof, of that person. If any person has made an untrue or incorrect return of the gross production or value thereof, as hereinbefore required, or has failed or refused to make a return, the commissioner shall under rules adopted by the commissioner, ascertain the correct amount of either, and compute the tax.
2. The time to assess additional tax found due is three years after the due date of the original return or three years after the original return is filed, whichever period expires later. However, if there is a change in tax liability on any return by an

amount in excess of twenty-five percent of the amount of tax liability reported on a return, any additional tax determined to be due may be assessed anytime within six years after the due date of the return or six years after the return was filed, whichever period expired later.

3. If a taxpayer files an amended return, the tax commissioner has two years after the return is filed to audit the return and assess any additional tax attributable to the changes or corrections even though other time periods prescribed in this section for the assessment of tax may have expired. The provisions of this section do not limit or restrict any other time period prescribed in this section for the assessment of tax that has not expired as of the end of the two-year period prescribed in this section.
4. For periods in which the tax commissioner has waived the requirement that a producer file a well production report required under section 57-51-06, the tax commissioner has three years after the due date of the purchaser's return or three years after the purchaser's return is filed, whichever period expires later, to assess the producer for additional tax found due. However, if there is a change in tax liability on the purchaser's return by an amount in excess of twenty-five percent of the amount of tax liability reported on a purchaser's return, any additional tax determined to be due may be assessed from the producer anytime within six years after the due date of the purchaser's return or six years after the purchaser's return was filed, whichever period expires later.
5. Any person who consents to an extension of time for assessment of tax must be presumed to have consented to a similar extension for refund.

57-51-10. Proceedings and penalty on delinquency. When the tax provided for in this chapter becomes delinquent, there is hereby imposed a penalty of five dollars, or a sum equal to five percent of the tax due, whichever is greater, with interest at the rate of one percent per month on the tax due, for each calendar month or fraction thereof during which such delinquency continues, excepting the month within which such tax became due, which must be collected in the manner hereinafter provided. If any person fails to make any report herein required, within the time prescribed by law for such report, it is the duty of the commissioner to examine the books, records, and files of such person to ascertain the amount and value of such production to compute the tax thereon as provided herein, and the commissioner shall add thereto the amount of any penalties accrued thereon. The commissioner, for good cause shown, may waive the penalty or the interest provided by this section.

57-51-11. Lien for tax - Preservation of lien - Satisfaction of lien.

1. The tax, penalty, and interest provided for in this chapter is, at all times, a first and paramount lien against the purchaser's or producer's property as the case may be, both real and personal. The provisions of this chapter making the purchaser liable to pay the tax and requiring the producer to pay the royalty owner's tax do not release the producer or purchaser from that liability. If the tax, penalty, and interest is not paid, it may be recovered at the suit of the state, upon relation to the commissioner, in any court of competent jurisdiction of the county where any such property, assets, and effects are located.
2. Any judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in this state, prior to the commissioner filing in the central indexing system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien. The commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.

- c. The name "State of North Dakota" as claimant.
- d. The date and time the notice of lien was indexed.
- e. The amount of the lien.

The notice of lien is effective as of eight a.m. of the first day following the indexing of the notice. A notice of lien filed by the commissioner with a recorder before August 1, 1997, may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

- 3. Upon the payment of tax, penalty, and interest, if applicable, or a penalty assessed under section 57-51-06, as to which the commissioner has indexed a notice in the central indexing system, the commissioner shall index a satisfaction of the lien in the central indexing system.
- 4. The commissioner is exempt from the payment of the fees otherwise provided for by law for the indexing of the lien or satisfaction.

57-51-12. Delinquent taxes - Sale of property. When any tax provided for in this chapter becomes delinquent, the commissioner shall issue warrants directed to the sheriff of any county wherein the same, or any part thereof accrued, for the collection of said tax, interest, and penalty; and the sheriff to whom said warrant is directed, shall proceed to levy upon the property, assets, and effects of the person liable for such tax, and shall sell the same and make return thereof, as upon execution. The state of North Dakota, through the commissioner, is authorized to make bids at any such sale to the amount of tax, penalty, and costs accrued.

57-51-13. False report deemed perjury. Repealed by S.L. 1975, ch. 106, § 673.

57-51-14. Duties of commissioner and state treasurer. It is the duty of the commissioner to deposit with the state treasurer all moneys collected by the commissioner under this chapter and to accompany each remittance, when possible, with a certificate showing the county where produced. The state treasurer, no less than quarterly, shall pay over to the county treasurers and city auditors of the several counties the moneys to which they are entitled hereunder.

57-51-15. (Effective through June 30, 2007) Apportionment and use of proceeds of tax. The gross production tax provided for in this chapter must be apportioned as follows:

- 1. First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer, who shall credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding five million dollars per biennium, including any amounts otherwise appropriated for oil and gas impact grants for the biennium by the legislative assembly, and who shall credit the remaining revenues to the state general fund.
- 2. The first one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county must be allocated seventy-five percent to that county and twenty-five percent to the state general fund. The second one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county must be allocated fifty percent to that county and fifty percent to the state general fund. All annual revenue after the deduction of the amount provided for in subsection 1 above two million dollars from oil or gas produced in any county must be allocated twenty-five percent to that county and seventy-five percent to the state general fund. However, the amount to which each county is entitled pursuant to this subsection must be limited based upon the population of the county according to the last official decennial federal census as follows:

- a. Counties having a population of three thousand or less shall receive no more than three million nine hundred thousand dollars for each fiscal year.
- b. Counties having a population of over three thousand but less than six thousand shall receive no more than four million one hundred thousand dollars for each fiscal year.
- c. Counties having a population of six thousand or more shall receive no more than four million six hundred thousand dollars for each fiscal year.

Any allocations for any county pursuant to this subsection which exceed the applicable limitation for that county as provided in subdivisions a through c must be deposited instead in the state's general fund.

3. Forty-five percent of all revenues as may by the legislative assembly be allocated to any county hereunder must be credited by the county treasurer to the county general fund. Thirty-five percent of all revenues allocated to any county must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection. Twenty percent of all revenues allocated to any county hereunder must be paid no less than quarterly by the state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official decennial federal census. However, no city may receive in any fiscal year an amount under this subsection greater than five hundred dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general fund. Provided, however, that in determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of determining the per capita limitation in this section must be increased by adding to the population of the city as determined by the last official decennial federal census a number to be determined as follows:

- a. Seasonal employees of state and federal tourist facilities within five miles [8.05 kilometers] of the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- b. Seasonal employees of all private tourist facilities within the city and seasonal employees employed by the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.

- c. The number of visitors to the tourist attraction within the city or within five miles [8.05 kilometers] of the city which draws the largest number of visitors annually must be included by taking the smaller of either of the following:
 - (1) The total number of visitors to that tourist attraction the prior year divided by three hundred sixty-five; or
 - (2) Four hundred twenty.

(Effective after June 30, 2007) Apportionment and use of proceeds of tax. The gross production tax provided for in this chapter must be apportioned as follows:

1. First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer who shall credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding six million dollars per biennium, including any amounts otherwise appropriated for oil and gas impact grants for the biennium by the legislative assembly, and who shall credit the remaining revenues to the state general fund.
2. The first one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county must be allocated seventy-five percent to that county and twenty-five percent to the state general fund. The second one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county must be allocated fifty percent to that county and fifty percent to the state general fund. All annual revenue after the deduction of the amount provided for in subsection 1 above two million dollars from oil or gas produced in any county must be allocated twenty-five percent to that county and seventy-five percent to the state general fund. However, the amount to which each county is entitled pursuant to this subsection must be limited based upon the population of the county according to the last official decennial federal census as follows:
 - a. Counties having a population of three thousand or less shall receive no more than three million nine hundred thousand dollars for each fiscal year.
 - b. Counties having a population of over three thousand but less than six thousand shall receive no more than four million one hundred thousand dollars for each fiscal year.
 - c. Counties having a population of six thousand or more shall receive no more than four million six hundred thousand dollars for each fiscal year.

Any allocations for any county pursuant to this subsection which exceed the applicable limitation for that county as provided in subdivisions a through c must be deposited instead in the state's general fund.

3. Forty-five percent of all revenues as may by the legislative assembly be allocated to any county hereunder must be credited by the county treasurer to the county general fund. Thirty-five percent of all revenues allocated to any county must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one

hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection. Twenty percent of all revenues allocated to any county hereunder must be paid no less than quarterly by the state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official decennial federal census. However, no city may receive in any fiscal year an amount under this subsection greater than five hundred dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general fund. Provided, however, that in determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of determining the per capita limitation in this section must be increased by adding to the population of the city as determined by the last official decennial federal census a number to be determined as follows:

- a. Seasonal employees of state and federal tourist facilities within five miles [8.05 kilometers] of the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- b. Seasonal employees of all private tourist facilities within the city and seasonal employees employed by the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- c. The number of visitors to the tourist attraction within the city or within five miles [8.05 kilometers] of the city which draws the largest number of visitors annually must be included by taking the smaller of either of the following:
 - (1) The total number of visitors to that tourist attraction the prior year divided by three hundred sixty-five; or
 - (2) Four hundred twenty.

57-51-16. Distribution of proceeds in certain cases. If gross production tax is paid to the commissioner and the reports accompanying such tax are insufficient to enable the commissioner to determine the source, by county, from which it is produced, the state treasurer shall allocate those revenues under this section. In the first distribution to counties under section 57-51-15 which occurs after June gross production tax revenues are received by the state treasurer for allocation, the revenue under this section must be allocated among counties in the same proportions that revenue was allocated among counties that received distributions under section 57-51-15 during the year ended June thirtieth. Revenue received by the county under this section must be allocated within the county as provided in subsection 3 of section 57-51-15.

57-51-17. Reports by carriers of oil and gas transported - Reports of refiners - Reports by persons purchasing or storing oil. It is the duty of every railroad company, pipeline company, or transportation company to furnish to the commissioner, upon request, any and all information relative to the transportation of oil or gas subject to gross production tax, that may be required to properly enforce the provisions of this chapter. The commissioner may require any pipeline or transportation company to install suitable measuring devices to enable the company to provide information concerning the quantity of oil or gas transported within, into, out

of, or across the state of North Dakota. It is the duty of every person engaged in the operation of a refinery for the processing of oil or gas, in the state of North Dakota, to furnish to the commissioner, upon request, any and all information, relative to oil or gas subject to gross production tax that has been processed by it that may be required to properly enforce the provisions of this chapter. It is the duty of every person engaged in the purchase or storing of oil or gas subject to gross production tax in the state of North Dakota to furnish to the commissioner, upon request, showing the amount of oil or gas in storage, and giving, along with information required, the location, identity, character, and capacity of the storage receptacle in which the oil or gas is stored. Information requested under this section must be provided within forty-five days of the request.

The failure of any person to comply with the provisions of this section makes that person subject to a penalty of twenty-five dollars for each day that person fails or refuses to furnish the information or comply with the provisions of this chapter. Any penalty may be recovered at the suit of the state, on relation of the commissioner. The penalty so collected must be apportioned to the state general fund. The commissioner may, for good cause shown, excuse any or all penalties imposed under this section.

57-51-18. Payment where ownership is in dispute - Assignment as security.
Repealed by S.L. 1991, ch. 689, § 8.

57-51-19. Claim for credit or refund. In all cases of overpayment, duplicate payment, or payment made in error, the commissioner may issue a certificate stating therein the facts and the amount of the refund to which the taxpayer may be entitled. Upon presentation of the certificate to the office of management and budget, a warrant shall be issued to the taxpayer for the purpose of refunding any overpayment, duplicate payment, or payment made in error out of the unapportioned gross production tax in the state treasury and a pro rata share thereof must be charged against the county entitled to share in the tax. Interest arising from refunds of overpayments, duplicate payments, and erroneous payments must be allowed and paid at the rate of ten percent per annum and accrues for payment from sixty days after the due date of the return or after the return was filed or after the tax was fully paid, whichever comes later.

A taxpayer may file a claim for credit or refund of an overpayment of tax within three years of the due date of the return or three years after the return was filed. However, if there is a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax liability reported on a return, a claim for refund of tax may be filed within six years after the due date of the return or six years after the return was filed, whichever period expires last.

57-51-19.1. Minimum refunds and collections.

1. A refund may not be made by the tax commissioner to any taxpayer unless the amount to be refunded, including interest, is at least five dollars. The tax commissioner shall transfer any amount that is not refunded to a taxpayer under this subsection to the state treasurer for deposit in the same manner as other revenue under this chapter.
2. A remittance of tax need not be made and any assessment or collection of tax may not be made unless the amount is at least five dollars, including penalties and interest.

57-51-20. Statements as to tax on settlements - Acceptance of deductions.
Repealed by S.L. 1989, ch. 732, § 5.

57-51-21. Rules and regulations - Bond - Reports - Actions. The commissioner may prescribe all necessary rules for making and filing of all reports required hereunder and otherwise necessary to the enforcement of this chapter. The commissioner may require a sufficient bond from any person charged with the making and filing of reports and the payment of the taxes imposed under this chapter. The bond must run to the state of North Dakota and must be conditioned upon the making and filing of reports as required by law, upon compliance with the

rules and regulations of the commissioner, and for the prompt payment, by the principal therein, of all taxes justly due the state under this chapter. When any reports required have not been filed, or may be insufficient to furnish all the information required by the commissioner, the commissioner shall institute, in the name of the state of North Dakota upon relation of the commissioner, any necessary action or proceedings in the courts having jurisdiction, to enjoin such person from continuing operations until such reports have been filed as required, and in all proper cases, injunction must issue without bond from the state of North Dakota. Upon showing that the state is in danger of losing its claims or the property is being mismanaged, dissipated, or concealed, a receiver must be appointed at the suit of the state.

57-51-22. Penalty. Any person intentionally violating any of the provisions of this chapter is guilty of a class A misdemeanor.

57-51-23. Application of chapter. Omitted.